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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 662.

ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

vs.

H. D. CHANCEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

BRIEF FOR RESPONDENT IN OPPOSITION.

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This is a simple run of the mill case under the Federal Employers' Liability Act.

The Supreme Court of Florida held that "The time elapsing between the discovery of the dangerous condition" and Chancey's fall "was of sufficient duration for Lee to notify the employee of Wilson & Toomer to fix the gangplank and the jury might reasonably find that he should have at the same time notified the plaintiff"(Petition, pp. 10 and 11). The petition for certiorari does not challenge this holding, but attacks rather a further holding, implicit but not specifically referred to in the Florida court's opinion, that the railroad company is liable for the results of Lee's negligence in failing to warn plaintiff of the dangerous condition of the gangplank.

Pointing out that "The Florida court apparently took it as of course that if Lee were negligent his negligence would be imputable to the railroad" (Petition, p. 4), petitioner asserts as the reason for granting the writ that the Florida court's judgment and opinion holding the railroad company liable for its employee's negligence extends "beyond any known limit" the railroad company's liability for failure to warn of a dangerous condition and that "the Florida court's opinion is supported by no case or textbook" (Petition, pp. 4, 5).

In taking "as of course" that if Lee were negligent, his employer would be liable, the Florida court was correct. For the very terms of the Federal Employers' Liability Act impose liability upon every carrier subject to the act for injury resulting in whole or in part "from the negligence of any of the officers, agents, or employees of such carrier". Section 51, Title 45, U. S. Code. By this language, the Congress "abrogated the common-law rule known as the fellow-servant doctrine by placing the negligence of a coemployee upon the same basis as the negligence of the employer". *Chesapeake & Ohio Ry. Co.* v. *DeAtley,* 241 U. S. 310, 36 S. Ct. 564, 565, 60 L. Ed. 1016; *Jamison* v. *Encarnacion,* 281 U. S. 635, 50 S. Ct. 440, 74 L. Ed. 1082; *Tiller* v. *Atlantic Coast Line R. Co.,* 318 U. S. 54, 62, 63 S. Ct. 444, 448, 87 L. Ed. 610.

The petitioner refers to the railroad company's employee, Lee, as "Chancey's *fellow servant* and no *representative of the railroad*" (Petition, p. 4), and says that "Only Smith (the foreman) stood in the relation of a *vice principal* to the railroad company" (Petition, p. 2). After so defining the relationship existing between the railroad company and its employees in terms of the old common law, petitioner concludes that "Chancey's fellow servant, Lee, owed no duty to give Chancey a warning, even as between

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fellow servants, and certainly he owed Chancey no duty which is imputable to their employer, the railroad company" (Petition, p. 5).

Thus, it is seen that petitioner relies on and seeks to have the Court apply the common law doctrine of fellow servant, although it invokes the court's jurisdiction upon a claim of right under the Federal Employers' Liability Act (Petition, p. 1) which abrogated that common law doctrine.

The circumstance that the premises where Chancey was hurt "were not under the general supervision of the railroad" (Petition, p. 5) is wholly irrelevant to a consideration of the railroad company's liability for the negligence of its employee, Lee, in failing to warn Chancey. Because the negligence found was not in failing to warn of a danger of which the railroad company had only constructive notice, but in failing to warn Chancey of the danger of which Lee, its employee, was actually aware and, with respect to which, Lee had actually warned an employee of Wilson & Toomer Company.

The holding by the Supreme Court of Florida that the railroad company was liable for the negligence of its employee, Lee, although he was, of course, a fellow employee with Chancey, did not depart from, but followed, the settled construction of the Federal Act.

Accordingly, the reasons urged for granting a writ of certiorari are wholly without foundation and the petition for certiorari should be denied.

Respectfully submitted,

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